

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: EAST PALESTINE TRAIN DERAILMENT**

Case No. 4:23-CV-00242-BYP

JUDGE BENITA Y. PEARSON

**JOINT STIPULATION UNDER RULE 41 OR, IN THE ALTERNATIVE,  
UNOPPOSED MOTION UNDER RULE 21 TO DISMISS  
NORFOLK SOUTHERN’S THIRD-PARTY CLAIMS AGAINST THIRD-PARTY  
DEFENDANT TRINITY INDUSTRIES LEASING COMPANY**

1. Third-Party Plaintiffs Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “Norfolk Southern”) and Third-Party Defendant Trinity Industries Leasing Company (“Trinity”) jointly stipulate under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) that Norfolk Southern’s third-party claims against Trinity in Norfolk Southern’s Third-Party Complaint (Dkt. 119)—specifically, Count One (negligence as against Trinity); Count Four (contribution as against Trinity, which the Court previously dismissed without prejudice)—are dismissed with prejudice, with each of Norfolk Southern and Trinity bearing its own fees and costs. All other parties who have appeared in this case—Plaintiffs and Third-Party Defendants GATX Corporation, General American Marks Company, and OxyVinyls LP—have signed this stipulation.

2. Due to uncertainty in the Sixth Circuit regarding the proper mechanism to dismiss claims against a single party in a multiparty action, in the alternative, Norfolk Southern and Trinity jointly seek the same relief under Federal Rule of Civil Procedure 21.\* Rule 21 provides:

---

\* The Sixth Circuit has previously “affirmed a district court’s Rule 41 dismissal of all claims against one of two defendants in an action.” *Letherer v. Alger Grp., L.L.C.*, 328 F.3d 262, 266 (6th Cir. 2003), *overruled on other grounds by Blackburn v. Oaktree Cap. Mgmt., LLC*, 511 F.3d 633 (6th Cir. 2008). But as the court of appeals has acknowledged, its “interpretation of Rule 41 is unclear.” *Id.*; *see*

“On motion or on its own, the court may at any time, on just terms, add or drop a party.” In applying Rule 21, courts are “guided by the maxim that the plaintiff is the ‘master of his complaint,’” and, absent “‘plain legal prejudice,’” a court “should not force [a plaintiff] to prosecute a suit against [a defendant].” *Yandell Constr. Servs., Inc. v. LMR Constr., LLC*, 2018 WL 4375112, at \*4 (W.D. Tenn. Sept. 13, 2018). Dismissal is proper here. Norfolk Southern and Trinity jointly agree. No party, Trinity or otherwise, would suffer any prejudice—as reflected by the stipulation signed by all parties in this case, and this alternative motion, which is unopposed by all parties. Accordingly, the Court should dismiss Norfolk Southern’s third-party claims against Trinity in the Third-Party Complaint (specifically, Count One (negligence as against Trinity) and Count Four (contribution as against Trinity, which the Court previously dismissed without prejudice)) with prejudice, with each of Norfolk Southern and Trinity bearing its own fees and costs.

3. This stipulation (or, in the alternative, motion) concerns only Norfolk Southern’s third-party claims against Trinity in this case—and not, for avoidance of doubt, those third-party claims asserted under the Comprehensive Environmental Response, Compensation, and Liability Act in *State of Ohio et al. v. Norfolk Southern Corp. et al.*, Nos. 23-cv-517, 23-cv-675. In addition, Norfolk Southern’s third-party claims against GATX Corporation, General American Marks Company, and OxyVinyls LP are unaffected by this stipulation (or, in the alternative, motion) and remain pending here.

---

also *Yandell Constr. Servs., Inc. v. LMR Constr., LLC*, 2018 WL 4375112, at \*2 (W.D. Tenn. Sept. 13, 2018) (“Sixth Circuit precedent appears to be in conflict as to whether Rule 41 may be utilized in dismissing only certain defendants to an action.”). Thus, in an abundance of caution, Norfolk Southern and Trinity also jointly move to dismiss Norfolk Southern’s claims against Trinity under Rule 21. See *Yandell*, 2018 WL 4375112, at \*3 (applying Rule 21 “because the weight of precedent favors this construction”).

Dated: May 22, 2024

Respectfully submitted.

WILMER CUTLER PICKERING  
HALE AND DORR LLP

DICKIE, MCCAMEY &  
CHILCOTE, P.C.

/s/ Alan Schoenfeld

ALAN SCHOENFELD\*  
ANDREW RHYS DAVIES\*  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel.: (212) 230-8800  
Fax: (212) 230-8888  
alan.schoenfeld@wilmerhale.com  
andrew.davies@wilmerhale.com

J. LAWSON JOHNSTON  
SCOTT D. CLEMENTS, Ohio Bar No. 0096529  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222  
Tel.: (412) 281-7272  
Fax: (412) 888-811-7144  
ljohnston@dmclaw.com  
sclements@dmclaw.com

DAVINA PUJARI\*  
CHRIS RHEINHEIMER\*  
One Front Street, Suite 3500  
San Francisco, CA 94111  
Tel.: (628) 235-1000  
Fax: (628) 235-1011  
davina.pujari@wilmerhale.com  
chris.rheinheimer@wilmerhale.com

ALBINAS PRIZGINTAS\*  
2100 Pennsylvania Avenue NW  
Washington, DC 20036  
Tel.: (202) 663-6000  
Fax: (202) 663-6363  
albinas.prizgintas@wilmerhale.com

*\*Pro hac vice*

*Counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company*

HAYNES AND BOONE LLP

RONALD W. BREAUX  
BRADLEY W. FOSTER  
CARRINGTON M. GIAMMITTORIO  
2801 N. Harwood St.  
Suite 2300  
Dallas, Texas 75201  
Tel.: (214) 651-5000  
Fax: (214) 651-5940  
ron.breaux@haynesboone.com  
brad.foster@haynesboone.com  
carrington.giammittorio@haynesboone.com

BARNES & THONBURG LLP

JEFF BARTOLOZZI  
41 S. High Street  
Suite 3300  
Columbus, OH 43215  
Tel.: (614) 628-0096  
Fax: (614) 628-1433  
jeff.bartolozzi@btlaw.com

*\*Pro hac vice*

BARTLIT BECK LLP

/s/ John Byars

---

SEAN GALLAGHER\*  
JOHN BYARS\*  
JOHN FITZPATRICK\*  
BRIAN SWANSON\*  
TULSI GAONKAR\*  
NORA ECCLES\*  
NENA BENAVIDES\*  
Courthouse Place  
54 West Hubbard Street  
Chicago, IL 60654  
Tel.: (312) 494-4400  
Fax: (312) 494-4440  
sean.gallagher@bartlitbeck.com  
john.byars@bartlitbeck.com  
john.fitzpatrick@bartlitbeck.com  
brian.swanson@bartlitbeck.com  
tulsi.gaonkar@bartlitbeck.com  
nora.eccles@bartlitbeck.com  
nena.benavides@bartlitbeck.com

LINDLEY BRENZA  
1801 Wewatta Street  
Suite 1200  
Denver, CO 80202  
Tel.: (303) 592-3100  
Fax: (303) 592-3140  
lindley.brenza@bartlitbeck.com

*Counsel for Trinity Industries Leasing Company*

*/s/ M. Elizabeth Graham*

---

M. Elizabeth Graham (pro hac vice)  
GRANT & EISENHOFER P.A.  
123 S. Justison Street, 6th Floor  
Wilmington, DE 19801  
303-622-7000  
303-622-7100 (fax)  
egraham@gelaw.com

Seth A. Katz (pro hac vice)  
BURG SIMPSON ELDREDGE  
HERSH & JARDINE, P.C.  
40 Inverness Drive East  
Englewood, CO 80112  
303-792-5595  
303-708-0527 (fax)  
skatz@burgsimpson.com

Jayne Conroy (pro hac vice)  
SIMMONS HANLY CONROY  
112 Madison Avenue, 7th Floor New York,  
NY 10016  
212-784-6400  
212-213-5949 (fax)  
jconroy@simmonsfirm.com

*Counsel for Plaintiffs*

/s/ Alycia N. Broz

Alycia N. Broz (0070205)

Kimberly Weber Herlihy (0068668)

Emily J. Taft (0098037)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, Ohio 43215

Phone: (614) 464-6400

Email: [anbroz@vorys.com](mailto:anbroz@vorys.com)

[kwherlihy@vorys.com](mailto:kwherlihy@vorys.com)

[ejtaft@vorys.com](mailto:ejtaft@vorys.com)

*Counsel for OxyVinyls LP*

/s/ Hariklia Karis

Joseph A. Castrodale (OH: 0018494)  
Meggan A. Louden (OH: 0074215)  
BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP  
127 Public Square, Suite 4900  
Cleveland, Ohio 44114-1284  
Tel.: (216) 363-4500  
Fax: (216) 363-4588  
jcastrodale@beneschlaw.com  
mlouden@beneschlaw.com

Hariklia (“Carrie”) Karis (IL: 6229535)  
Robert B. Ellis (IL: 6206846)  
Jonathan O. Emmanuel (IL: 6329645)  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Tel.: (312) 862-2000  
Fax: (312) 862-2200  
hkaris@kirkland.com  
rellis@kirkland.com  
jon.emmanuel@kirkland.com

Sydne K. Collier (TX: 24089017)  
KIRKLAND & ELLIS LLP  
4550 Travis Street  
Dallas, Texas 75205  
Tel.: (214) 972-1770  
Fax: (214) 972-1771  
sydne.collier@kirkland.com

*Counsel for GATX Corporation and General American Marks Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2024, I caused a copy of the foregoing to be filed with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will provide electronic notice to all counsel of record.

/s/ Alan Schoenfeld

ALAN SCHOENFELD